(Slip Opinion)

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SUPREME COURT OF THE UNITED STATES

No. 68–5027

Earnest James Aikens, Jr., Petitioner, *v.* State of California. | On Writ of Certiorari to the Supreme Court of California.

[June 7, 1972]

PER CURIAM.

Petitioner in this case, which has been orally argued and is now *sub judice*, has filed a Suggestion of Mootness and Motion for Remand based on the intervening decision of the California Supreme Court in *People* v. *Anderson*, 6 Cal. 3d 628 (1972). That decision declared capital punishment in California unconstitutional under Art. 1, § 6, of the state constitution. The decision rested on an adequate state ground and the State's petition for writ of certiorari was denied. — U. S. —. The California Supreme Court declared in the *Anderson* case that its decision was fully retroactive and stated that any prisoner currently under sentence of death could petition a superior court to modify its judgment. Petitioner thus no longer faces a realistic threat of execution, and the issue on which certiorari was granted—the constitutionality of the death penalty under the Federal Constitution—is now moot in his case. Accordingly the writ of certiorari is dismissed.

END OF CASE